IN THE HIGH COURT OF DELHI

CR No.313/2000

Shri Balkishan Dass ..... Petitioner
! through: Mr.M.K.Singh, Advocate

VERSUS

$ M/s. Chunni Lal Ram Narain & Ors..... Respondents
^ through: Nemo

% DATE OF DECISION: 21.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3 . Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**(Oral)

1. Petitioner (DH) is aggrieved by an order dated 27.11.1999 passed by the Executing Court holding that execution proceedings had to be dropped as claim of the decree holder stood satisfied.

2. Facts have been correctly noted in the impugned order. I cull out the relevant facts from the same.

3. The ex-parte decree in sum of Rs.40,340/- was obtained by the decree holder. An application under order 39

Rule 13 CPC was filed. The same was allowed vide order dated 8.9.1995 but subject to the term that a bank guarantee would be furnished to secure the decretal amount. In the meanwhile, decree holder had put the decree in execution. The execution petition was also tagged with the main suit. Bank guarantee limited in sum of Rs.30,000/- was furnished.

4. On 27.2.1996 orders were passed that the decree stands since term of recall was not complied with. Sum of Rs.30,000/- secured by the bank guarantee was directed to be released to the petitioner.

5. Remaining decree was sought to be got executed. On 7.4.1998 a compromise was arrived at in the execution petition under which decree holder received Rs.15,000/- by means of a cheque in full and final satisfaction of all claims. The decree was held to be satisfied. Unfortunately, the cheque bounced. On an application filed the execution was restored. On 15.5.1998 judgment debtor tendered pay order in sum of Rs.15,000/-. The same was received by the decree holder. On same day an application under Section 151 CPC was filed praying that balance decree be got executed.

6. Learned Executing Court has opined that the settlement effected on 7.4.1998 was an accord, satisfaction whereof would have satisfied the decree. Since banker's cheque

was received in lieu of the dishonoured cheque it was held that the decree stands satisfied in its entirety.

7. As noted by the Division Bench of this Court in the decision dated 4.3.2003 in FAO (OS) NO.417/2001 *M/s. Jindal Aromatic Vs. South Coast Spices Exports Pvt. Ltd.* an accord discharges the performance of obligations under a contract. The dispute pertaining to satisfaction furnishes a fresh and independent cause of action, in that until and unless it is established that the performance of the satisfaction was a condition precedent for discharge under the contract, if promise is received in satisfaction, it is a good satisfaction, but if the performance and not the promise is intended to operate in satisfaction, then there will be no satisfaction without performance. Wherever there is an accord, obligations under the original contract would be discharged until and unless it is specifically provided that the performance of the satisfaction would discharge the obligation under the contract.

8. In the instant case, decree holder did not reserve right by making it clear to the court that the banker's cheque being received by him was not in lieu of the dishonoured cheque but was without prejudice to his right to continue with the execution proceedings.

9. I find no merits in the petition.

10. Dismissed.

November 21, 2007 **PRADEEP NANDRAJOG, J.**
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